IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 5853 of 2007 & W.P.(C) 7770-7838 of 2007

Karam Bir Singh & Ors. ...Petitioners through
Mr. Bijendra Singh, Advocate.

Versus

Union of India & Anr. ...Respondents through
Ms. Sonia Mathur, Advocate.

Date of Decision : October 24, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

VIKRAMAJIT SEN, J. (Oral)

J U D G M E N T

1. There are seventy (70) Petitioners before us all of whom prayed for the issuance of a writ of mandamus and further appropriate directions to the Respondents to allow pensionary benefits to them with all consequential benefits including the payment of arrears for the period when the

benefits were withheld and further to allow the Petitioners to rejoin/be re-inducted to their respective services. It is the latter prayer which has been substantially pressed before us. The controversy, however, is no longer res integra in view of the decision of the Supreme Court in Union of India -vs- ***Rakesh Kumar***, (2001) 4 SCC 309 and ***Raj Kumar*** -vs- Union of India, (2006) 1 SCC 737.

2. In ***Rakesh Kumar*** the Petitioner had joined the Border Service Force as a constable on 15.1.1981 and continued to serve till he submitted his resignation on 11.2.1994, after rendering 12 years and 8 months of service. His resignation was accepted on 1.3.1994 under Rule 19 of the Border Security Force Rules, 1969 (hereinafter referred to as `the BSF Rules'). By Order dated 3.5.1997 Rakesh Kumar was allowed full pensionary benefits as admissible under the Rules consequent upon his resignation from the BSF. As the pension was not released the High Court of Himachal Pradesh was approached which directed the Competent Authority to quantify pensionary benefit of Rakesh Kumar as other similarly situated persons from the date of their retirement. Their Lordships noted that the Petitioner(s) in that batch of petitions had served

for more than 10 years but were not eligible or entitled to get pensionary benefits and accordingly the High Court's directions tantamounted to perpetuating illegality. Their Lordships further observed that payment of pension neither attracted Article 14, nor estopped the Department from discontinuing payment and from seeking recovery. Since the Petitioner had not fulfilled the parameters of "qualifying service" as envisaged under the CCS (Pension) Rules it was held that the Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of age of retirement or before putting such number of years of service as may be necessary under the Rules to gain eligibility for retirement, would not be entitled to get pension. It was further enunciated that the Government cannot amend or substitute statutory rules by administrative instructions, and only if the Rules are silent on any particular point could the Government fill up the gaps provided there was no inconsistency with the extant Rules. All the Petitioners before us have also not served the minimum period envisaged under CCS (Pension) Rules as would render them eligible for retirement with pensionary benefits.

3. In ***Raj Kumar*** their Lordships noted that the

GO/circular dated 27.12.1995 notifying that the Government had agreed with their views that "a member of the Force is entitled to get pensionary benefits on resignation under Rule 19 of the said Rules provided he has put in requisite number of years of service and fulfills all other eligibility conditions". The said Circular was erroneously interpreted to permit any member of the BSF to resign with permission of the Competent Authority even before completing qualifying service. The result was that in the case of 447 personnel the pension was released and in the case of 1762 personnel a decision in this regard was pending. In those circumstances, on 15.1.1998 rectificatory action was taken and all personnel who resigned with less than 20 years service under the mistaken impression with pensionary benefits not granted to them till then should be taken back into service. These disputes had come before their Lordships who decided the matter in the following terms:

> 14. We are unable to accept the contention urged on behalf of the petitioners that the confusion with regard to the interpretation of Rule 19 of BSF Rules was cleared only as a result of the judgment in **Rakesh Kumar**. Even before **Rakesh Kumar** was decided, way back in the year 1998 itself the authorities seemed to have realised their mistake as evidenced by the letter dated 15.01.1998 followed by

the circular dated 17.10.1998. **Rakesh Kumar** was decided only in the year 2001, almost 3 years later. Such of the BSF personnel who had resigned in the hope of getting pensionary benefits, although not eligible for pension under the CCS Pension Rules 1972, had been given the opportunity of getting back into service by virtue of the circular dated 17.10.1998. Despite the deadline for reporting being extended from 30.04.1999 to 31.08.1999, about 697 personnel had failed to avail of the opportunity of returning to service. There cannot be any equity in favour of those that failed to avail of the opportunity of rejoining service. If any of them failed to take advantage of the offer for re-induction into service, they have only themselves to thank, in such cases, obviously, there cannot be any relief granted in the present writ petitions, contrary to the law declared by **Rakesh Kumar**.

(underlining added)

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17. We find that the cases before us can be divided into the following categories:

(A) Pre-circular. Personnel who resigned and were granted pension for special reasons, even prior to the circular dated 27.12.1995.

(B) Post-circular. Personnel who resigned pursuant to the circular dated 27.12.1995. These persons can be further divided into two sub-

categories:

(i) Personnel who retired in 1996, were sanctioned pension and were therefore asked vide letters dated 31.10.1998 not to report for re-induction. Their pension has been stopped pursuant to the judgment in **Rakesh Kumar**. These persons can be further divided into two sub-categories:

(a) those who are in a position to be re-inducted into service even now; and

(b) those who cannot be re-inducted into the service as a result of being age-barred or due to being medically or physically unfit.

(ii) Those who retired subsequent to 1996, were not sanctioned pension, and were directed to report for re-induction in to service or to forfeit pension benefits by virtue of the circular dated 17.10.1998 and the individual letters.

18. Having considered the peculiar facts arising in each of these groups, we make the following orders:

1. The personnel falling in category (B)(ii) i.e. those persons who had retired subsequent to 1996 pursuant to the circular dated 27.10.1995 and had not been sanctioned pension, but who have been directed to report for re-induction in service shall necessarily have to forfeit their pension, if they have not reported for service by virtue of the circular dated 17.10.1998. If

however, they have reported for service then there is no question of any relief in their case.

2. In the case of persons falling in category (B)(i), they shall also be given the option of re-induction into service, and those falling in category (B)(i)(a) shall be so re-inducted, subject to the conditions stipulated in circular dated 17.10.1998 and on condition that they shall refund the GPF and pension amounts drawn by them till re-induction. The authorities shall indicate the deadline by which such persons shall offer themselves for re-induction.

3. In the case of persons who shall fall in category B(i)(b), i.e. persons who had retired in 1996, were sanctioned pension but who cannot be re-inducted today as they are age-barred or physically or medically unfit or for any other reason including their inability to return the amount of GPF, pension drawn or other dues, there shall be no question of continuing payment of pension which shall be liable to cease as a result of the decision in **Rakesh Kumar**. We are however of the view that equity demands that in such cases there shall be no recovery of the pension amounts already paid to them.

4. In cases which fall under category (A), i.e. personnel who had resigned prior to the circular dated 27.12.1995 and had been granted pension for special reasons and continued to draw it till the stoppage of pension as a result of the judgment in

> **Rakesh Kumar** we think that irrespective of the position in law, equity demands that, as they have drawn their pension for long periods, they shall not be asked to refund their drawn pension amounts, nor shall their pension be stopped now.
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> 19. We have made the aforesaid directions in exercise of our powers under Article 142 of the Constitution in order to do complete justice to a section of the personnel who would otherwise be placed in an inequitable situation for which the authorities are also partly to blame. It is open to this Court to mould the relief by safeguarding the interest of the parties even while declaring the law. The paramount consideration in such cases should be to ensure that there is no injustice caused (see in this connection Deb Narayan Shyam v. State of W.B.**,** (2005) 2 SCC 286, paras 26 and 29 and State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94, para 36. Barring this limited relief no other relief is due to the petitioners before us. Subject to the aforesaid limited relief all the petitions are dismissed.
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> (emphasis added)

4. The learned counsel for the Petitioners clarifies that the Petitioners before us did not avail of the opportunity to be taken back in service as per letter of the Director General, BSF dated 15.1.1998. It is contended that the matter had already become sub judice and in these circumstances the Petitioners

were of the view that they were entitled to await the outcome of that litigation. Since they have been unsuccessful in their efforts, they must bear the brunt of their obduracy.

5. As we have observed at the commencement of these Orders the matter is no longer res integra. The Petitioners have only themselves to blame for not availing of the opportunity for returning to duty/service. Their Lordships in ***Raj Kumar*** did not extend any succour to such persons although the existence of their group, i.e., "about 697 personnel" had been specifically noted. The Petitioners had taken the risk that is endemic in litigation. Having failed in their endeavour this Court under Article 226 of the Constitution would not direct the Respondents to take them back into service after the passage of several years.

6. The writ petition is without merit and is dismissed accordingly.

(VIKRAMAJIT SEN)
JUDGE

(S.L. BHAYANA)

October 24, 2007 JUDGE

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